

NO. _____

STATE OF TEXAS,
Plaintiff

v.

E-TELEMATION, INC. d/b/a
U.S. CREDIT, MICHAEL C.
CORBELL and ROBERT F.
LEAUMONT, JR.,
Defendants

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL VERIFIED PETITION AND APPLICATION FOR
EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND
PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the STATE OF TEXAS, Plaintiff, acting by and through Attorney General of Texas GREG ABBOTT (referred to herein as the "Attorney General"), on behalf of the State of Texas and on behalf of the interest of the general public of the State of Texas, and complains of E-TELEMATION, INC., doing business as *U.S. CREDIT*, and MICHAEL C. CORBELL and ROBERT F. LEAUMONT, JR., Individually. The Attorney General would respectfully show the Court as follows:

DISCOVERY

1. Discovery shall be conducted under LEVEL 2 of Rule 190.3 of the Texas Rules of Civil Procedure.

JURISDICTION

2. This action is brought by Attorney General Greg Abbott through his Consumer Protection Division in the name of the State of Texas under the authority granted to him pursuant to §17.47 of the Texas Deceptive Trade Practices Act, TEX. BUS. & COM. CODE ANN. §17.41 *et seq.*, ("DTPA"),

upon the grounds that Defendants have engaged in false, misleading and deceptive acts and practices in the conduct of trade or commerce as defined and declared unlawful by §17.46 (a) and (b) of the DTPA.

3. This action is also brought by Attorney General Greg Abbott through his Consumer Protection Division in the name of the State of Texas under the authority granted to him pursuant to Chapters 37 & 38 of the Telephone Solicitation Act (TSA), TEX. BUS. & COM. CODE ANN. §§37.01 and 38.001 *et seq.*, upon the grounds that Defendants have wholly failed to comply with the requirements required to file a registration statement with the Texas Secretary of State to engage in telephone solicitation.

DEFENDANTS

4. E-Telemation, Inc. (“e-Telemation, Inc.”), d/b/a U.S. Credit, is a Texas corporation whose principal place of business is 16850 Titan Drive, Houston, Texas 77058, Harris County, Texas. E-Telemation, Inc. may be served with process by serving its registered agent for service of process, Michael C. Corbell, at 16850 Titan Drive, Houston, Texas 77058.

5. Michael C. Corbell is an individual residing in Seabrook, Texas who may be served with process at 16850 Titan Drive, Houston, Texas 77058.

6. Robert F. Leumont, Jr. is an individual residing in Sugarland, Texas who may be served with process at 16850 Titan Drive, Houston, Texas 77058.

VENUE

7. Venue of this suit lies in Harris County, Texas, for the following reasons:

A. Under TEX. CIV. PRAC. & REM. CODE ANN. §15.002(a)(1), venue is proper because all or part of the causes of action alleged herein occurred in Harris County, Texas;

B. Venue is also proper in Harris County, Texas, under TEX. CIV. PRAC. & REM. CODE ANN. §15.002(a)(2) and(3) because the individual Defendants were residents of Harris County, Texas at the time the causes of action accrued, and because the corporate Defendant's principal office is in Houston, Harris County, Texas;

C. Venue is also proper in Harris County, Texas under TEX. CIV. PRAC. & REM. CODE ANN. §15.002(a)(3) because Defendants' principal office is located in Harris County, Texas; and

D. Venue is also proper under DTPA §17.56 because Defendants do business in Harris County, Texas, and the transactions that form the basis of this cause of action occurred in Harris County, Texas.

PUBLIC INTEREST

8. Because Plaintiff State of Texas has reason to believe that Defendants have engaged in, and will continue to engage in the unlawful practices set forth below, Plaintiff State of Texas has reason to believe Defendants have caused and will cause immediate, irreparable injury, loss and damage to the State of Texas, and will also cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. Therefore, the Consumer Protection Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

9. Defendants have, at all times described below, engaged in conduct constituting "trade" and "commerce," as those terms are defined in §17.45(6) of the DTPA.

ACTS OF AGENTS

10. Whenever in this petition it is alleged that a Defendant did any act, it is meant that:

- A. The Defendant performed or participated in the act, or
- B. The Defendant's officers, agents, trustees or employees performed or participated in the act on behalf of and under the authority of the Defendant.

NOTICE BEFORE SUIT NOT GIVEN

11. Pursuant to §17.47(a) of the Deceptive Trade Practices Act and §38.301(b) of the Telephone Solicitation Act, contact has not been made with the Defendants herein to inform them of the unlawful conduct alleged herein, for the reason that the Plaintiff is of the opinion that there is good cause to believe that such an emergency exists that immediate and irreparable injury, loss or damage would occur as a result of such delay in obtaining a temporary restraining order, and that Defendants would evade service of process and flee the jurisdiction, destroy relevant records and secrete assets if prior notice of this suit were given.

SPECIFIC FACTUAL ALLEGATIONS

12. E-Telemation, Inc.¹ filed Articles of Incorporation on November 27, 2001 listing Robert F. Leaumont, Jr. and Michael C. Corbell as directors with an address of 17000 El Camino Real, Suite 307, Houston, Texas 77058. (Exhibits "1 [p. 6, para. 18] & 13 [p. 3]"). Michael C. Corbell was also listed as the corporate registered agent. (Exhibits "1 [p. 6, para. 18] & 13 [p. 3]"). On March 1, 2002, E-Telemation, Inc. subsequently filed an assumed name certificate to do business as *U.S. Credit*, at the same location. (Exhibits "1 [p. 6, para. 17] & 12").

13. Defendants advertise in various newspapers, advertisement mail circulars, and magazines across the country soliciting individuals to call their toll-free number for guaranteed approval of a

¹ The Articles of Incorporation were filed as e-Telemation, Inc.; however, the assumed name record lists the corporation as E-Telemation, Inc.

Visa or MasterCard. (Exhibits “1 [pp. 1-2, para. 4], 2 [pp. 1-4], 3 [p. 4] & 4 [pp. 3 & 7]”). Consumers call the toll-free number, and after giving their name, address and phone number, they are asked for their checking account number and routing number for their bank. (Exhibits “1 [p. 2, para. 5], 3 [p. 1, para. 3], 4 [p. 1, para.3], 5 [p. 1, para. 4] & 34 [p. 1]”).

14. When consumers ask why their account information is needed, they are told it is necessary to verify that they actually do have an account and are assured that their account will not be debited. (Exhibits “1 [p. 2, para. 6], 3 [p.1, para. 3], 4 [p.1, para. 3-4] & 5 [p.1, para. 4]”).

15. Consumers subsequently discover that Defendants make an unauthorized withdrawal from their bank account in the amount of \$99.00. (Exhibits “1 [p. 3, para. 8], 3 [p. 1, para. 4], 4 [p. 1, para. 4], 5 [p. 1, para. 5] & 34 [p.1]”). The majority of consumers are not given prior notice by the Defendants that their account is being debited. (Exhibits “1 [p. 3, para. 8], 3 [p. 1, para. 4] & 4 [p. 1, para. 4]”).

16. In some cases, consumers are informed a \$99 fee will be drafted from their account and these consumers refuse Defendant’s services and terminate the phone call, only to have \$99.00 drafted from their account anyway. (Exhibits “34 [p. 1] & 35 [p. 2]”).

17. Once consumers realize their accounts have been debited and call Defendants to complain, they are told they consented to the fees and will receive a credit card “kit” complete with a list of companies and banks with whom they can apply for credit. (Exhibits “1 [p. 3, para. 9], 4 [p. 1, para. 4], 5 [p. 1, para.5] & 6 [p. 1, para. 2]”).

18. Consumers are also told they are getting approval for a credit card which they will receive in the mail, and many are told that they will be receiving a card in a particular number of days, and/or with a specific credit limit. (Exhibits “1 [pp. 1-2, para. 7], 3 [p. 1, para. 3] & 4 [p. 1, para. 3]”).

19. Complaining consumers indicate that they never would have consented to pay \$99 for a simple listing of credit card companies to whom they could apply for credit. (Exhibits “1 [p. 3, para. 9] & 3 [p. 2, para. 6]”).
20. Consumers who complain to the Defendants about the unauthorized drafting from their bank accounts are told Defendants have tapes proving the consumers authorized the debit and that they may return Defendants’ package unopened once they receive it—entitling them to a full refund. (Exhibits “1 [p. 3, para. 9], 5 [p.1, para. 5] & 6 [p.1, para. 2 & 4]”).
21. When consumers ask to hear the tapes proving they consented to the debit, Defendants either state that it will take weeks or months to locate the tape, or that they don’t have to produce anything—and sometimes they just hang up. (Exhibits “1 [p. 3, para. 9], 4 [p. 1, para. 4], 5 [p. 1, para. 5] & 6 [pp. 1-2, para. 2 & 7]”).
22. Most consumers never receive anything from Defendants, despite having money debited from their bank accounts by Defendants. (Exhibits “1 [pp. 3-4, para. 10], 4 [pp. 1-2, para. 4], 6 [p. 2, para. 8], 7 [pp. 4-5], 8 [p. 2], 34 & 35 [p. 2]”). *None* of the consumers ever receive a credit card as promised from Defendants. (Exhibits “1 [p. 5, para. 15], 3 [p. 1, para. 5] & 4 [pp. 1-2, para. 4]”).
23. A few consumers actually receive a “kit” on how to *apply* for a credit card. (Exhibits “1 [p. 4, para. 11], 3 [p. 2, para. 6], 34 & 9”). When this “kit” is returned, consumers are told by Defendants that they will only receive a 75% refund if they show proof of receiving denial letters from at least (4) credit card companies. (Exhibits “1 [p. 4, para. 11], 3 [p. 2, para. 7] & 34”).
24. Some consumers had additional fees ranging from \$9 to \$11 per month drafted from their account—over and above the *unauthorized* \$99. (Exhibits “1 [p. 3, para. 9], 3 [pp. 1-2, para. 4 & 8], 4 [p. 1, para. 4], 5[p. 2, para. 7], 6 [pp. 1-2, para. 3 & 6], 7 [pp. 1 & 3], 8 [p. 2] & 35 [p. 2]”). Some

of the withdrawals occurred even after consumers called the Defendants to complain and/or filed fraud alerts with their financial institutions. (Exhibits “3 [p. 2, para. 8], 5 [p. 2, para. 7] & 6 [pp. 1-2, para. 3 & 6]”).

25. Some consumers never called Defendants or responded to their advertisements at all. (Exhibits “1 [p. 5, para. 16] & 6 [p. 1, para. 2]”). These consumers never heard of Defendants until they discovered that their bank account had been debited by them. (Exhibits “1 [p. 5, para. 16] & 6 [p. 1, para. 2]”). After calling Defendants to find out why their account had been debited, consumers were told that they had previously done business with a company called *Freedom Credit*, which was taken over by Defendants, and that the debit was for monies the consumer previously owed to *Freedom Credit*. (Exhibits “1 [pp. 5-6, para. 16] & 6 [p. 2, para. 10]”). Consumers in this situation maintain they never had any dealings with *Freedom Credit* and therefore did not owe Defendants any money. (Exhibits “1 [pp. 1-2, para. 16] & 6 [p. 2, para. 11]”).

26. Consumers are subjected to profanity, being laughed at, and hung up on when they call Defendants to inquire about the unauthorized debits to their accounts. (Exhibits “1 [para. 12], 6 [para. 7], 7 [pp. 4-5], 8 [p. 2], 34 & 35 [p.2]”). Other consumers are never successful in getting Defendants to answer their phone or return messages. (Exhibits “1 [p. 4, para. 12] & 7 [pp. 3-5]”).

27. Consumers incur overdraft fees and stop payment fees to have the debits reversed from their accounts. (Exhibits “1 [p. 4, para. 13], 3 [pp. 1 & 2, para. 4 & 8], 4 [p. 1, para. 4], 5 [p. 2, para. 7], 6 [p. 2, para. 9], 7 [p. 3], 8 [p. 2] & 35 [p. 2]”). Other consumers had to ultimately close their bank accounts to stop the unauthorized debits from continuing. (Exhibits “1 [pp. 3-4, para. 13], 4 [p.2, para. 5] & 6 [p.2, para. 9]”).

VIOLATIONS OF THE DTPA

28. Defendants in the course and conduct of trade and commerce, have directly and indirectly

engaged in false, misleading and deceptive acts and practices declared to be unlawful by the DTPA §17.46(a) and DTPA §17.46(b), by engaging in the following conduct:

A. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of DTPA, §17.46(b)(2);

B. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, in violation of DTPA, §17.46(b)(3);

C. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have, in violation of DTPA, §17.46(b)(5);

D. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another, in violation of DTPA, §17.46(b)(7);

E. Advertising goods or services with intent not to sell them as advertised, in violation of DTPA, §17.46(b)(9);

F. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, in violation of DTPA, §17.46(b)(12); and

G. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction which the consumer would not have entered had the information been disclosed, in violation of DTPA, §17.46(b)(24).

VIOLATIONS OF THE TELEPHONE SOLICITATION ACT

29. Defendants have solicited, and continue to solicit funds in violation of Chapter 38 of the

Texas Telephone Solicitation Act. Specifically, Defendants have violated the Telephone Solicitation Act by engaging in the following conduct:

A. Engaging in solicitation by telephone without filing a registration statement with the Texas Secretary of State which contains, among other things, the seller's name and name under which the seller is doing business, a copy of the seller's articles of incorporation and bylaws, the name & principal address of each person in charge of the location where the seller does business, and the name and principal address of each salesperson who solicits on behalf of the seller, in violation of §§38.101(a) and 38.151 of the Telephone Solicitation Act;

B. Engaging in solicitation by telephone without paying the \$200.00 registration fee to the Texas Secretary of State as required by §§38.103 & 38.104 of the Telephone Solicitation Act;

C. Engaging in solicitation by telephone without submitting to the Texas Secretary of State either (1) a bond executed by a corporate security approved by the secretary of state and licensed to do business in this state, (2) an irrevocable letter of credit, or (3) a certificate of deposit in the amount of \$10,000 as required by §§38.107(a)(1)-(3) & 38.107(b)(1) of the Telephone Solicitation Act;

D. Engaging in solicitation by telephone without filing disclosures of sales information with the Texas Secretary of State, including a description of the items the seller is offering for sale, a copy of all sales information and literature, and a copy of all written material the seller sends to any consumer, as required by §38.153(1)-(3) of the Telephone Solicitation Act;

E. Failing to supply the purchaser, before the consummation of any sales transaction, the complete street address of the location from which the salesperson is calling, in violation of § 38.202(1) of the Telephone Solicitation Act;

F. Representing or implying that the consumer will receive without charge a specified

item when the solicitation is made and before consummation of any sales transaction, without providing to the consumer all rules, regulations and terms a consumer must meet to receive the item, in violation of § 38.202(2)(A) of the Telephone Solicitation Act; and

G. Knowingly representing or implying that the consumer will receive without charge an item or service, and knowingly requesting a checking account number from the consumer for the purpose of debiting from the checking account an amount as a condition precedent to the consumer's receipt of an item, in violation of § 38.253(a)(1) and(2) of the Telephone Solicitation Act.

VIOLATIONS OF THE TEXAS FINANCE CODE

30. Defendants have engaged in numerous acts which violate the Texas Finance Code, TEX. FIN. CODE ANN. § 392.301 *et seq.* (Vernon 1998). Such acts include using fraudulent, deceptive, or misleading representations that employ the following:

A. Misrepresenting the character, extent, or amount of a consumer debt, or misrepresenting the consumer debt's status in a judicial or governmental proceeding, in violation of TEX. FIN. CODE ANN. §392.304(a)(8); and

B. Representing falsely the status or nature of the services rendered by the debt collector or the debt collector's business, in violation of TEX. FIN. CODE ANN. §392.304(a)(14).

DISGORGEMENT

31. All of Defendants' assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains and benefits or profits that result from Defendants putting fraudulently converted property to a profitable use. Defendants should be ordered to disgorge all monies fraudulently taken from individuals and businesses together with all of the proceeds, profits, income, interest and

accessions thereto. Such disgorgement should be for the benefit of victimized consumers and the State of Texas.

REPATRIATION OF ASSETS

32. After due notice and a hearing, the court should order that all of Defendants' assets situated outside the jurisdiction of this Court be deposited or repatriated into an appropriate financial institution within the jurisdiction of this Court.

REQUEST FOR FINDINGS OF ACTUAL FRAUD AND FALSE REPRESENTATION

33. The Court should make findings at the conclusion of this case that all of the Defendants engaged in actual fraud and false representation in that Defendants have made repeated and materially false representations to the public concerning the issuing of credit cards, which were known to be false when made. Such false representations were made with the intention that they be acted upon by the parties to whom the misrepresentations were made. Reliance upon these false representations has resulted in injury to hundreds if not thousands of consumers across the United States as well as in the State of Texas.

NECESSITY OF IMMEDIATE RELIEF TO PRESERVE DEFENDANT'S ASSETS

34. Plaintiff requests immediate relief by way of a Temporary Restraining Order and Temporary Injunction to preserve and protect Defendants' assets from dissipation so that the many victims of Defendants' actions can receive the restitution to which they are entitled. Defendants receive sums of money through their credit card provider scheme and use fraudulently solicited funds for personal gain. Defendant's assets are subject to dissipation for the following reasons:

A. Defendants are not bonded and registered with the Texas Secretary of State as required by law, thus all of the funds received by Defendants are contraband. (Exhibits "13 [pp. 1-4]

& 14 [pp. 1-4]”).

B. Defendants operate their business by only giving out a telephone number and a P.O. Box and do not reveal their physical address to consumers thereby attempting to evade detection by law enforcement agencies and Plaintiff. (Exhibits “2 & 20”).

C. Defendants withdraw funds from the individuals’ banking account using an “ACT” (Automatic Clearing House) so the money cannot be easily traced and can be put to immediate use by Defendants for their personal gain. (Exhibit “44”).

D. Defendants debit funds from consumers’ bank accounts without any authorization which is tantamount to theft. (Exhibits “1 [p. 3, para. 8], 3 [p. 1, para. 4], 4 [p. 1, para. 4], 5 [p.1, para. 5] & 34 [p.1]”). Defendants then refuse to refund monies to consumers after they complain. (Exhibits “1 [p. 3, para. 9], 4 [p. 1, para. 4], 5 [p. 1, para.5] & 6 [p. 1, para. 2]”). Defendants are in possession of funds to which they have no justiciable claim.

E. Defendant Leumont makes out a number of checks payable to Defendants themselves and to “cash” and this “cash” inures to the benefit of the Defendants. Defendant Leumont has had \$49, 403.83 in checks written to him from E-Telemation accounts in a 14 month period. (Exhibit “ 38 [p. 3]”). In addition, in the same time frame, Defendant Leumont has also written and endorsed an additional \$86, 369.00 in checks made out to “cash.” (Exhibit “39 [p. 3]”). Defendant Corbell has had \$94, 080.94 in checks written to him from E-Telemation in a year and a half. (Exhibit “ 37 [p. 4]”).

F. Defendants spend the monies taken fraudulently from consumers about as fast as they take in such monies. (Exhibits “40, 41 & 42).

For these reasons, the assets of Defendants are subject to dissipation and secretion and therefore should be frozen pending final trial so restitution can be made and full and final relief can

be awarded at final trial.

**REQUEST TO CONDUCT DISCOVERY PRIOR
TO TEMPORARY INJUNCTION HEARING**

35. Plaintiff requests leave of this Court to conduct telephonic, oral, written and other depositions of witnesses prior to any scheduled Temporary Injunction Hearing and prior to Defendant's answer date. There are a number of victims and other witnesses who may need to be deposed prior to any scheduled injunction hearing. Most of these witnesses live outside the State of Texas and thus cannot appear at any scheduled Temporary Injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys, if known.

TRIAL BY JURY

36. Plaintiff herein requests a jury trial and tenders the jury fee to the Harris County District Clerk's office pursuant to TEX. R. CIV. P. 216 and TEX. GOVT. CODE ANN. §51.604.

**APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

37. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the law as alleged in this Petition. Unless immediately restrained by this Honorable court, Defendants will continue to violate the laws of the STATE OF TEXAS and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public. Therefore, Plaintiff requests an Ex Parte Temporary Restraining Order, Temporary Injunction and Permanent Injunction as indicated below.

PRAYER

38. WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER be issued;

that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, Defendants' successors, assigns, officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendants from engaging in the following acts or practices:

A. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials relating to the business of Defendants currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause;

B. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing or allowing the transfer, removal, or withdrawal from any financial institution or from the jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed, wherever situated, belonging to or owned by, in the possession or custody of, standing in the name of, or claimed by Defendants without further order of this court;

C. Opening or causing to be opened any safe deposit boxes or storage facilities titled in the name of Defendants or any of Defendants' assumed names, or subject to access or control by Defendants, without providing Plaintiff and the Court prior notice by motion seeking such access;

D. Orally or verbally soliciting bank account numbers or bank account routing information from consumers while on the telephone;

E. Making withdrawals of monies from consumers' bank accounts without their prior, express and written authorization and consent;

F. Withdrawing money from consumers' bank accounts unless Defendants have a

signed, written consent and authorization form from each consumer to have such funds withdrawn in a specific amount, from a specific bank account;

G. Representing, expressly or by implication, that Defendants are affiliated with, endorsed by, authorized by, supported by, associated with or in any way related to any Visa, MasterCard, American Express, or any other credit card provider unless they are in fact affiliated, associated with or endorsed by such company, and have written documentation of such association at the time such representation is made;

H. Representing to consumers, expressly or by implication, that Defendants will provide consumers with a credit card or that Defendants will assist consumers in obtaining a credit card;

I. Representing to consumers, expressly or by implication, that they have been approved for a credit card and/or will receive a credit card within a specified time;

J. Representing to consumers, expressly or by implication, that they have been approved for a credit card with a particular credit limit;

K. Representing to banks and financial institutions, expressly or by implication, that a particular consumer has authorized or agreed to an ACH withdrawal or debit, when in fact there is no such authorization or agreement in writing from said consumer;

L. Advertising in any manner for guaranteed approval or approval of a Visa, MasterCard, or other credit card;

M. Failing to fully inform and affirmatively disclose to consumers in all advertisements and in any form of oral or written solicitation that Defendants do not provide credit cards to consumers, but rather a list of credit card companies to which consumers can apply for credit cards;

N. Representing to consumers, expressly or by implication, that there are tape recordings

which depict the consumer consenting to or authorizing some action, when in fact such tape recordings do not exist;

O. Failing to fully advise and disclose to consumers in all oral or written solicitations the complete terms and conditions of any refund policy, including, the fact that refunds will not be given if that is the case;

P. Engaging in telephone solicitation without filing a full and complete registration statement with the Secretary of State pursuant to §38.102 of the Texas Business and Commerce Code;

Q. Engaging in telephone solicitation without first filing a complete registration statement with the Texas Secretary of State which discloses:

- 1) the seller's name and the name under which the seller is doing or intends to do business, if it is different from the seller's name pursuant to TEX. BUS. & COM. CODE §38.151(1);
- 2) the name of each parent and affiliated organization of the seller that will engage in business transactions with purchasers relating to sales solicited by the seller or accepts responsibility for statements made by, or acts of, the seller relating to sales solicited by the seller pursuant to TEX. BUS. & COM. CODE §38.151(2)(a)(b);
- 3) the seller's business form and place of organization and if the seller is a corporation or partnership, a copy of its articles of incorporation and bylaws or a copy of the partnership agreement pursuant to TEX. BUS. & COM. CODE §38.151(3)-(5);

- 4) the location where any assumed name has been registered pursuant to TEX. BUS. & COM. CODE §38.151(6);
- 5) for any parent or affiliated organization, the applicable information that is required of a seller under subsections 3 & 4 above, pursuant to TEX. BUS. & COM. CODE §38.151(7);
- 6) the complete street address of each location of the seller, designating the principal location from which the seller will be conducting business pursuant to TEX. BUS. & COM. CODE §38.151(8);
- 7) a listing of each telephone number to be used by the seller and the address where each telephone using the number is located pursuant to TEX. BUS. & COM. CODE §38.151(10);
- 8) the name, title, complete address of principal residence, date of birth, number and state of issuance of the drivers license of each of the seller's officers, directors, trustees, general and limited partners, sole proprietors and owners, as applicable, and the name of each of those persons who has management responsibilities in connection with the seller's business activities pursuant to TEX. BUS. & COM. CODE §38.151(11) & (12);
- 9) the name and principal residence address of each person the seller leaves in charge at each location from which the seller does business in this state and the business location at which each of these persons is or will be in charge pursuant to TEX. BUS. & COM. CODE §38.151(13);
- 10) the name and principal residence address of each salesperson who solicits on

behalf of the seller or a copy of the “Employer’s Quarterly Report” for employee wages the seller files with the Texas Workforce Commission and the name the salesperson uses while soliciting pursuant to TEX. BUS. & COM. CODE §38.151(14);

11) the name and address of the seller’s agent in this state, other than the Secretary of State, authorized to receive service of process pursuant to TEX. BUS. & COM. CODE §38.151(15); and

12) the name and address of each financial institution with which banking or similar monetary transactions are made by the seller and the identification number of each of the seller’s accounts in each institution pursuant to TEX. BUS. & COM. CODE §38.151(16).

R. Failing to complete a registration statement, pay the registration fee and post the required security as required by TEX. BUS. & COM. CODE §§38.103, 38.104 and 38.107 prior to engaging in telephone solicitation;

S. Misrepresenting the character, extent, or amount of a consumer debt, or misrepresenting the consumer debt’s status in a judicial or governmental proceeding, in violation of TEX. FIN. CODE ANN. §392.304(a)(8);

T. Representing falsely the status or nature of the services rendered by the debt collector or the debt collector’s business, in violation of TEX. FIN. CODE ANN. §392.304(a)(14); and

U. Operating any type of telemarketing operation on behalf of U.S. Credit, E-Telemation, Inc. or any other person or entity, unless and until Defendants have fully complied with Chapter 38 of the Texas Business and Commerce Code.

39. In addition, Plaintiff STATE OF TEXAS respectfully prays that this Court will:

A. Adjudge against each Defendant civil penalties in favor of Plaintiff STATE OF TEXAS in an amount up to \$10,000 per violation, not to exceed \$100,000.00 allowed by law under the DTPA, specifically, §17.47(c)(2) of the Texas Business and Commerce Code, due to Defendants committing acts and practices which were calculated to acquire or deprive money or other property from consumers who were 65 years of age or older when the act or practice occurred;

B. Adjudge against each Defendant civil penalties in favor of Plaintiff, STATE OF TEXAS, in an amount up to \$2,000 per violation, not to exceed \$10,000 allowed by law pursuant to TEX. BUS. & COM. CODE §17.47(c)(1);

C. Adjudge against Defendants civil penalties in favor of Plaintiff, STATE OF TEXAS, in an amount up to \$5,000 per violation, allowed by law under §38.302(a) of the Texas Business and Commerce Code;

D. Order Defendants to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or, in the alternative, award judgment for damages in an amount within the jurisdictional limits of this court to compensate for such losses;

E. Order Defendants to pay Plaintiff STATE OF TEXAS attorney fees and costs of court pursuant to TEX. GOVT. CODE §402.006(c);

F. Order the disgorgement of all sums taken from consumers by means of Deceptive Trade Practices, together with all proceeds, interest, income, profits and accessions thereto;

G. Grant leave to the Plaintiff to conduct telephonic, oral and other depositions prior to the Defendants' answer date and any Temporary Injunction hearing; and

H. Grant all other relief to which the Plaintiff State of Texas may show itself entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

JEFFREY S. BOYD
Deputy Attorney General for Litigation

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VERIFICATION

STATE OF TEXAS

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COUNTY OF HARRIS

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Before me, the undersigned Notary Public, on this day personally appeared Cathryn Haynes, who, after being duly sworn, stated under oath that she is the lead investigator for Plaintiff in this action, that she has read the above petition, and that every statement contained in the petition is true and correct and within the personal knowledge of all of the affiants as indicated in the affidavits attached to Plaintiff's Original Petition.

CATHRYN HAYNES

SUBSCRIBED AND SWORN TO BEFORE ME, on the ____ day of July, 2003, to certify which witness my hand and official seal.

NOTARY PUBLIC
State of Texas